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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 MARIA LASTRA,

12 Plaintiff,

13 vs.

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15 PHH MORTGAGE CORP F/K/A  
16 CENDANT MORTGAGE, et al.,

17 Defendants.  
18

CASE NO. 10cv2573-LAB (BLM)

**ORDER GRANTING *EX PARTE*  
APPLICATION TO DEEM NOTICE  
OF REMOVAL AMENDED; AND**

**ORDER GRANTING MOTION FOR  
JUDGMENT ON THE  
PLEADINGS;**

**ORDER RE: RELATED CASE**

19 On December 15, 2010, Defendant Clayton Goff removed this action from state court,  
20 citing diversity jurisdiction. The notice of removal alleged PHH's state of incorporation but  
21 not its principal place of business, and alleged Lastra's state of residence (California) rather  
22 than her citizenship. Lastra moved for remand, citing the lack of a federal question but not  
23 addressing diversity. Goff sought leave to amend the notice of removal to include PHH's  
24 principal place of business. Defendants also moved for judgment on the pleadings, and  
25 Lastra didn't oppose this motion.

26 On February 28, the Court issued an order deeming the notice of removal amended  
27 to include PHH's principal place of business, and denying Lastra's motion for remand without  
28 prejudice. That order pointed out Goff hadn't formally alleged Lastra was a California citizen,

1 only that she was a California resident, though it appeared she herself had alleged facts  
2 showing she was also a California citizen. The Court therefore gave Defendants leave to  
3 move *ex parte* to deem the notice of removal amended to include an allegation that Lastra  
4 is a California citizen. The motion for remand was denied without prejudice, with the caveat  
5 that if Defendants failed to promptly allege Lastra's citizenship as formally required, the  
6 Court would reconsider its order denying remand.

7 **I. Amendment of Notice of Removal**

8 The notice of removal suffered from formal pleading defects, but it is evident the  
9 parties are all diverse and the amount in controversy is met for the Court's exercise of  
10 diversity jurisdiction. Removal was timely, because Goff removed within 30 days of being  
11 served with the complaint.<sup>1</sup> See 28 U.S.C. § 1446(b); *Destfino v. Reiswig*, 630 F.3d 952,  
12 956 (9th Cir. 2011) (holding that a defendant may remove an action 30 days after being  
13 served with the complaint, without regard to when other defendants were served). The  
14 notice of removal is therefore **DEEMED AMENDED** to allege that Lastra is a citizen (not  
15 merely a resident) of California. Defendants' request for judicial notice is **DENIED AS MOOT**  
16 because it is not necessary at this stage to offer proof of the uncontested issue of Lastra's  
17 citizenship. See 28 U.S.C. § 1446(a).

18 **II. Motion for Judgment on the Pleadings**

19 As noted, Lastra never opposed Defendants' motion for judgment on the pleadings.  
20 Under Civil Local Rule 7.1(f)(3)(c), failure to file an opposition to a motion when required to  
21 do so can constitute consent to the granting of that motion. Furthermore, the motion is well  
22 taken because the complaint is a form complaint devoid of the type of allegations required  
23 in federal court. See Fed. R. Civ. P. 8.

24 The motion for judgment on the pleadings is therefore **GRANTED** and the complaint  
25 is **DISMISSED WITHOUT PREJUDICE**. Lastra may, if she wishes, file an amended  
26 complaint no later than the close of business on Friday, April 1, 2011. She is directed to  
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28 <sup>1</sup> Goff was not named as a Defendant until December 7, 2010, when Lastra amended her complaint. He removed this action on December 15.

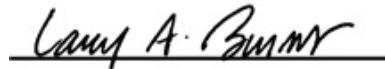
1 review the applicable rules, particularly Fed. R. Civ. P. 8, 9, and 10, and Civil Local Rule 5.1  
2 particularly before amending.

3 **III. Related Case**

4 On December 15, 2010, Defendants filed a notice of related case, identifying reasons  
5 why they thought this case was related to *Lastra v. PHH Mortgage Corp.*, et al., 10cv2571-  
6 JLS (NLS). Based on the current non-specific complaint, the Court cannot evaluate whether  
7 the two cases are related. If Lastra files an amended complaint, the Clerk is directed to  
8 generate and forward a low-number order.

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10 **IT IS SO ORDERED.**

11 DATED: March 1, 2011

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13 **HONORABLE LARRY ALAN BURNS**  
14 United States District Judge  
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